

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 08-1158 RB/KBM
CR 06-1080 RB

J. SERGIO OJEDA-OJEDA,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendant's Motion For Reduction Of Sentence Pursuant to 28 U.S.C. § 2255 (CV Doc. 1; CR Doc. 63). Defendant alleges that, because of his status as a deportable alien, he is ineligible for certain pre-release custody programs. He argues that his ineligibility was a mitigating factor at sentencing, and this Court's failure to consider his deportability resulted in a longer sentence than would have been imposed on an American citizen. According to the motion, the Court's failure to reduce Defendant's sentence based on deportability violated his rights under the Equal Protection Clause.

No relief is available on Defendant's claim.

[Defendant's] request for a downward departure based on the "collateral consequences" of his status as a deportable alien has been foreclosed


. . . .

. . . "[T]he federal government can treat aliens differently from citizens so long as the difference in treatment has a rational basis." . . . We agree . . . [that] there is a rational basis to deem deportable aliens, who will be sent out of the country after the term of their sentence, ineligible for programs geared toward rehabilitating prisoners who will re-enter society after their release from confinement.

United States v. Tamayo, 162 F. App'x 813, 814, 816 (10th Cir. 2006) (internal citations omitted).

Under the reasoning in *Tamayo*, no relief is available on Defendant's claim under § 2255 for reduction of his sentence. *See* § 2255 R. 4(b). The Court will dismiss Defendant's motion.

IT IS THEREFORE ORDERED that Defendant's Motion For Reduction Of Sentence Pursuant to 28 U.S.C.A. § 2255 (CV Doc. 1; CR Doc. 63) is DISMISSED with prejudice, and judgment will be entered.

A handwritten signature in black ink, appearing to read "Robert Brack", is written above a horizontal line.

ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE